

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**ELMER L DONALDSON**

Claimant

**APPEAL NO. 17A-UI-12262-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MINNESOTA LIMITED LLC**

Employer

**OC: 01/01/17**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Elmer Donaldson (claimant) appealed a representative's November 20, 2017, decision (reference 03) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Minnesota Limited (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 19, 2017. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 24, 2017, as a full-time union laborer. The claimant worked under union contract. He normally worked from 7:00 a.m. to 5:00 p.m. The claimant had been diagnosed with high blood pressure and a sleep disorder. He was required to take his medications with food. The employer did not issue him any warnings during his employment.

On October 29, 2017, the claimant worked a shortened shift, 7:00 a.m. to 11:30 a.m. He started work again at 7:00 p.m. on October 29, 2017, and was told to work an overnight shift. The employer gave him a thirty minute lunch break at midnight. At 7:00 a.m. on October 30, 2017, the employer held a midmorning meeting. At the meeting the employer told the workers they would quite possibly work until 3:00 p.m. Just before 8:00 a.m. on October 30, 2017, the claimant was feeling weak and unwell. He knew he did not bring enough food to last until 3:00 p.m. and the claimant had to take his medicine with food. He told his supervisor that he needed to eat something and asked how much longer until break. The supervisor told him to go home and not come back.

The claimant left work and contacted his labor steward and human resources for information about returning to work or being laid off. No information was forthcoming.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's November 20, 2017, decision (reference 03) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs